

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: LPA NO. 36/2024
CM No. 1096/2024
CM No. 1097/2024

1. Commissioner Secretary to Government, Department of Rural Development & PR, Civil Secretariat, Jammu

2. Director, Rural Development Department, Jammu

....Petitioner/Appellant(s)

Through:- Mrs. Monika Kohli, Sr. AAG

V/s

Ryaz Ahmed S/o Mohd. Rafiq R/o Azamabad, Tehsil Mandi District, Poonch

.....Respondent(s)

Through:- Mr. P. N. Bhat, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER

11.11.2025

CM No. 1096/2024

1. This condonation application has been preferred by the applicants seeking 22 days' delay in filing the above titled Letter patent Appeal (LPA) against the order dated 01.12.2023 passed by the learned Single Judge in CPSW No. 703/2018.
2. For the reasons stated in the application coupled with the submissions made at Bar and in view of the no objection from the other side, sufficient cause for condoning the delay is made out.

3. Application is allowed and 22 days' delay in filing the above titled LPA is condoned.

4. The application is, accordingly, disposed of.

LPA No. 36/2024

5. The present Letters Patent Appeal has been filed by the appellants under Clause 12 of the Letters Patent, assailing the order dated 01.12.2022 passed by the learned Single Judge in Contempt Petition, CPSW No. 703/2018 titled "*Ryaz Ahmed vs. Dr. Sheetal Nanda and another*". By virtue of the impugned order, the appellants were directed to comply with the judgment passed by the Writ Court in its letter and spirit and to file a fresh compliance report.

6. The controversy in these proceedings pertains to the regularization of the services of the respondent, who was initially engaged as a Casual Labourer on 06.06.1995 in Block Office Mandi, District Poonch. The respondent was subsequently disengaged on 30.04.2003 on the ground that his engagement was made after the cut-off date of 31.03.1994 prescribed under SRO 64 of 1994.

7. Aggrieved by his disengagement, the respondent filed SWP No. 893/2003, which came to be disposed of vide order dated 20.10.2010, whereby the termination order was set aside. The appellants were directed to take a decision on the respondent's regularization under SRO 64 of 1994 within three months.

8. The aforesaid judgment was challenged by the appellants in LPA No. 89/2011, which was dismissed on 01.03.2013 by the Division Bench Thereafter in compliance to the judgment dated 20.10.2010, vide Govt. Order No. 283-RD &PR of 2014 dated 16.10.2014, relaxation in the upper age limit by 11 months and 28 days in his favour as on 01.01.2014 was accorded in favour of the respondent as well as sanction was accorded for regularization of his services against the available vacancy of a Class-IV post in the pay scale of Rs. 4440-7440 with grade pay of Rs. 1300/- in the office of the Executive Engineer, REW Division Poonch, with immediate effect outside the framework of SRO 64.

9. The respondent thereafter challenged the said order by filing SWP No. 1235/2015, contending that his regularization should relate back to the date he completed seven years of continuous service. The learned Single Judge, vide order dated 31.07.2019 relying on *Mushtaq Ahmad Sohail v. State of J&K* (2013 (1) SLJ 73) and *State of J&K v. Shahida Bano* (LPA (SW) No. 207/2014), held that the right of regularization must relate back to the date of accrual of such right. The appellants were directed to treat the respondent as having been appointed from the date he completed seven years of continuous service, without monetary benefits, except for purposes of pension and retiral benefits.

10. During this period, the respondent filed CPSW No. 703/2018, alleging non-compliance of the order dated 20.10.2010 passed in SWP No. 893/2003.

11. It is contended by the appellants that, in compliance with the said directions, the case of the respondent had already been duly examined and rejected vide order dated 30.10.2023 on the ground that the respondent has been engaged as Casual Labour and not Daily Wager that too after 31.03.1994 and his case is not covered under SRO 64/1994 for regularization.

12. The appellants have assailed the order dated 01.12.2023, by filing the present LPA, on the ground that the learned Single Judge, while considering the contempt petition, has exceeded his jurisdiction by issuing fresh direction to them.

13. Learned counsel for the appellants submits that the appellants have complied with the directions passed by the learned Writ Court by passing consideration order dated 30.01.2023, therefore, the learned Writ Court ought to have dropped the contempt proceedings. However, by passing the impugned order, the learned Writ Court has exceeded its jurisdiction by directing them to file fresh compliance report.

14. The learned counsel for the respondent had raised a preliminary objection as regards the maintainability of the present appeal under Section 19 the Contempt of Courts Act in light of the Apex Court judgments as also the judgments

of this Court, therefore, the LPA was heard on the maintainability point only in the first instance.

15. The right to appeal under Section 19 of the Contempt of Courts Act arises only against an order or decision of the High Court imposing punishment for contempt. Section 19 of the Act, being relevant, is reproduced as under:

“19. Appeals:

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—

- (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
- (b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

- (a) the execution of the punishment or order appealed against be suspended;
- (b) if the appellant is in confinement, he be released on bail; and
- (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

- (a) in the case of an appeal to a Bench of the High Court, within thirty days;
 - (b) in the case of an appeal to the Supreme Court, within sixty days,
- from the date of the order appealed against.”

16. A bare perusal of Section 19(1), reproduced herein above would indicate that right of appeal would be available only against any order or decision of the High Court in exercise of its jurisdiction to punish for contempt, whereas the

impugned order does not impose any punishment; it merely directs filing of a fresh compliance report.

17. The law on this issue is well settled. In **“*Midnapore Peoples’ Cop Bank Ltd. vs. Chunilal Nanda & Ors.*” reported as (2006) 5 SCC 399**, the Hon’ble Supreme Court, while taking note of the several decisions rendered on the scope of Section 19(1) of the Act, held as under:-

“11.The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceeding, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).”

18. The issue with regard to the maintainability of the appeal under Section 19(1) of the Act and letters patent appeal under Clause 12 of the Letters Patent against an order of the Contempt Court issuing Rule for contempt has also been decided by this Court in LPASW No.267/2017 **“State of J&K and others v. Mohammad Tayoub Leharwal and anr.”** decided on 31.01.2018. What was held by this Court in the aforesaid judgment in paragraph Nos. 5, 6 and 9 is reproduced hereunder:-

“5. Sub Section 1(a) & (b) of Section 19 of the Act provides as under:-

“19. Appeal

(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt;-

(a) where the order or decision is that of a single judge, to a bench of not less than two judges of the court;

(b) Where the order of decision is that of bench, to the Supreme Court.

From a bare perusal of Section 19(1), reproduced herein above, would indicate that right of appeal would be available only against any order or decision of the High Court in exercise of its jurisdiction to punish for contempt.

6. Section 94 of the Constitution of Jammu & Kashmir, which is pari materia to Article 215 of the Constitution of India, provides that the High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself or of the courts subordinate to it. That being the explicit position, appeal under Section 19(1) of the Act would lie only when High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. A three-Judge Bench of the Supreme Court in the case of D.N.Taneja v. Bhajan Lal; (1988) 3 SCC 26 considered this aspect in extenso. What was held in paragraph-12 of the judgment reads thus:-

“12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no

right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court.”

9. This takes us to another plea raised by the learned counsel for the appellants that even if it is assumed that the appeal against the order impugned is not maintainable under Section 19(1) of the Act, yet the same would be maintainable under Clause 12 of the Letters Patent. We have given thoughtful consideration to this aspect of the matter also but do not find any merit in the submission made by the learned counsel for the appellants-State. Clause 12 of the Letters Patent provides for an appeal from a judgment of the learned Single Judge passed in exercise of original jurisdiction to the Division Bench. What would be the judgment in terms of Clause 12 of the Letters Patent, has been well explained in series of judgments rendered by Hon’ble the Supreme Court as well as this Court. The word “Judgment” is undoubtedly a concept of finality in broader sense. The judgment could either be a final judgment, preliminary judgment or intermediary judgment or interlocutory judgment but it would be a judgment only if it decides some issue or right between the parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between the parties cannot be said to be the judgment amenable to the appellate jurisdiction of the Division Bench under Clause 12 of the Letters Patent. It is not the case of the appellants that by virtue of the order impugned the Contempt Court has issued directions which go beyond the scope of the judgment alleged to be violated by the appellants.”

19. The same principle has been reiterated in “**Union Territory of JK v. Shahnaza Parveen & Ors**” passed in LPA No. 20/2021 decided on 24.08.2021, the Hon’ble High

Court of J&K and Ladakh in paragraph Nos. 13 & 14 has held as under:-

“13. In State of J&K & Ors vs. Mohd. Tayoub Leharwal and Anr. 2018 (1) JKJ 627 (HC) a Division Bench of this court held that under Section 19 of the Contempt of Courts Act 1997 Right to Appeal is available only against an order or decision of the High Court to punish for contempt. It has further relied upon a decision of the Supreme Court in the case of Midnapore People's Cooperative Bank Ltd. Vs. Chuni Lal Nanda 2006 (5) SCC 399 to hold that under Clause 12 of Letters Patent, an appeal would lie to the Division Bench only from the “judgment” of the learned Single Judge passed in exercise of original jurisdiction. The word “judgment” in terms of Clause 12 is undoubtedly a concept of finality in broader sense. It would either be a final judgment, a preliminary judgment or intermediary judgment or interlocutory judgment, but it should be a judgment in the sense that it decides some issue or right between the parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between the parties cannot be said to be a “judgment” amenable to available jurisdiction of the Division Bench under Clause 12 of the Letters Patent.

14. In view of the above decision of the Coordinate Bench of this Court, as in the case at hand, all the orders passed in proceedings for contempt are of interlocutory nature which does not determine any right or issue between the parties finally, we are of the considered opinion that the Letters Patent Appeal under Clause 12 of the Letters Patent is not maintainable.”

20. Section 19(1) of the Contempt of Courts Act can be invoked only when a Court has actually decided to punish someone for contempt. Orders that are passed during the case, but do not impose any punishment cannot be challenged under this section. These are normal directions that help the Court to conduct the proceedings, but do not constitute a final determination on the issue of contempt. Therefore, routine orders passed while the contempt case is still ongoing do not come under Section 19 of the Act, because they do not deal with the main question of contempt or impose any penalty.

21. In the present case, the impugned order dated 01.12.2023, is only a routine order passed to facilitate the progress of the case, it neither imposes any punishment for contempt nor finally determines any right of the parties. It is only an interlocutory order requiring the appellants to file a fresh compliance report. The learned Single Bench has also not made any addition or alteration to the original directions sought to be implemented through the contempt petition in which the order impugned has been passed. The appellants still have sufficient opportunity to justify their consideration order before the contempt Court.

22. In view of the settled legal position laid down by the Hon'ble Supreme Court in *Midnapore Peoples' Coop. Bank Ltd.* (supra), followed by the Division Bench of this Court, we are of the considered view that the present appeal against an interlocutory order passed in contempt proceedings is not maintainable. Accordingly, the appeal is **dismissed**.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

Jammu:
11.11.2025
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